

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
August 14, 2006

D047121 People v. Heupel

The judgment is affirmed. Nares, J.; We Concur: Benke, Acting P.J., O'Rourke, J.

D047776 In re Zepeda on Habeas Corpus

Reversed. Irion, J.; We Concur: McConnell, P.J., Huffman, J.

D045355 In re Marriage of Stonecypher

The order and judgment are affirmed. Parties shall bear their own costs on the appeal and cross-appeal, except David shall pay Audrey's costs on appeal. Haller, J.; We Concur: McConnell, P.J., Benke, J.

D048166 People v. Hernandez

The judgment is affirmed. Huffman, Acting P.J.; We Concur: O'Rourke, J., Irion, J.

D048036 People v. Cervantes

The judgment is affirmed. McIntyre, J.; We Concur: Benke, Acting P.J., Huffman, J.

Court convened at 9:00 a.m.

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Judith Haller and Alex McDonald
Clerk: D. Moore

D046076 People v. Bahena

Cause called on merits. Mark S. Devore, Esq. argued for appellant. Shannon Kitten, Certified Law Student argued for respondent. Mr. Devore replied. Cause submitted.

D046424 White v. FAV, Inc.

Cause called on merits. David A. Kay, Esq. argued for appellant. Scott M. Bonesteel, Esq. argued for respondent. Mr. Kay replied. Cause submitted.

D046435 Brown et al. v. Philip Morris USA Inc., et al.

Cause called on merits. Sharon Arkin, Esq. argued for appellant. Daniel Collins, Esq. argued for respondent. Ms. Arkin replied. Cause submitted.

Court recessed at 10:26 a.m. until 1:30 p.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
August 14, 2006 (Continued)

D047680 People v. Talton

The portion of the judgment convicting Talton of grant theft is reversed. In all other respects the judgment is affirmed. The matter is remanded to the trial court with instructions to the court clerk to (1) correct the abstract of judgment date December 8, 2005, by deleting the portion showing that Talton was convicted of grand theft (count 3: section 487, subd. (a)), and (2) forward a copy of the corrected abstract of judgment to the Department of Corrections. Nares, Acting P.J., We concur: McIntyre, J., Irion, J.

D048195 In re Heidi G., a Juvenile

It is ordered that the opinion filed on July 20, 2006, is modified. No change in judgment. The petition for rehearing is denied.

D046490 People v. Thammavong

The order is affirmed. Nares, Acting P.J.; We Concur: McDonald, J., O'Rourke, J.

D047544 People v. Williams

The judgment is affirmed. Nares, Acting P.J.; We Concur: McDonald, J., McIntyre, J.

D046437 Rierson v. Meritplan Insurance Company et al

The judgment is reversed as to the fourth, fifth, seventh and eighth causes of action. In all other respects, the judgment is affirmed. Parties to pay their own costs on appeal. Nares, Acting P.J.; We Concur: McDonald, J., McIntyre, J.

D046788 People v. Faulcon

The judgment is affirmed. Nares, J.; We Concur: McConnell, P.J., Huffman, J.

D047288 People v. Posey

Let a writ of mandate issue directing the superior court to vacate the judgment and sentence imposed on August 15, 2005, and to hold a new hearing for resentencing subject to (1) the views expressed in this opinion regarding the mandatory nature of section 290, subdivision (g)(2), regarding conditions of probation; and (2) our direction that the trial court shall reinstate the subject count and permit Posey to withdraw his plea of guilty if he so elects. The opinion will be final as to this court 10 days after the date of filing. (Cal. Rules of Court, rule 24(b)(3)). Huffman, Acting P.J.; We Concur: Haller, J., O'Rourke, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
August 14, 2006 (Continued)

D048217 In re Arionn L., a Juvenile

The judgment is affirmed. Nares, J.; We Concur: McConnell, P.J., McDonald, J.

D047172 People v. Harris

The judgment is affirmed. McDonald, Acting P.J.; We Concur: McIntyre, J., O'Rourke, J.

Court convened at 1:30 p.m.

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Judith Haller and Joan Irion

Clerk: J. Matuk

D046893 People v. Root

Cause called on merits. Joseph Milchen, Esq. argued for appellant. Peter Quon, Esq. argued for respondent. Cause submitted.

Court adjourned at 1:45 p.m.

D044138 People v. Anzalone

The opinion filed July 13, 2006, is modified. The petition for rehearing is denied. There is no change in the judgment.

D048945 Christopher K. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner Christopher K. has notified the court that a petition for writ of mandate under California Rules of Court, rule 38.1 and 1436.5 will not be filed as there are no viable issues for writ review. The case is dismissed.

D048954 Josefina M. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner Josefina M. has notified the court that a petition for writ of mandate under California Rules of Court, rule 38.1 and 1436.5 will not be filed as there are no viable issues for writ review. The case is dismissed.

D048050 Priscilla G. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner Priscilla G. has notified the court that a petition for writ of mandate under California Rules of Court, rule 38.1 and 1436.5 will not be filed as there are no viable issues for writ review. The case is dismissed.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
August 14, 2006 (Continued)

D047058 Helleis V. W.A. LLC/Blackburn

Upon written stipulation filed by the parties, the appeal filed September 12, 2005, by Jacqueline Helleis, is dismissed and the remittitur is ordered to issue immediately. Each party to bear its own costs on appeal.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
August 15, 2006

D048948 Martin v. Barber et al.

Pursuant to California Rules of Court, rule 8, the appeal filed June 28, 2006, is dismissed for appellant's failure to timely designate the record.

D049055 Tevis v. Superior Court of San Diego County/Prudential Property & Casualty Insurance Co.

The petition is denied.

D047884 People v. Murillo

The judgment is affirmed. Nares, Acting P.J.; We Concur: Haller, J., O'Rourke, J.

D048778 In re Marriage of Corlew

Pursuant to California Rules of Court, rule 8, the appeal filed June 28, 2006, is dismissed for appellant's failure to timely designate the record.

Court convened at 9:00 a.m.

Present: The Honorable Judith Haller, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and James McIntyre
Clerk: D. Moore

D047016 Polselli v. Latin Marketing Services Inc., et al.

Cause called on merits. Darlene Palaganas, Esq. argued for appellant. Benjamin Taliaferro Morton, Esq. argued for respondent. Ms. Palaganas replied. Cause submitted.

D046869 Miletich et al. v. McKibban

Cause called on merits. Suzanne Rand-Lewis, Esq. argued for appellant. Christopher Perez, Esq. argued for respondent. Ms. Rand-Lewis replied. Cause submitted.

D047083 Gregory v. Sprint Spectrum L.P.

Cause called on merits. Daniel Evan Eaton, Esq. argued for appellant. Tami Hennick, Esq. argued for respondent. Mr. Eaton replied. Cause submitted.

Court recessed at 10:21 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Alex McDonald, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Terry O'Rourke
Clerk: D. Moore

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
August 15, 2006 (Continued)

D047260 Figiel v. Hyundai Motor America

Cause called on merits. David Noel Ruben, Esq. argued for appellant. Michael Edward Lindsey, Esq. argued for respondent. Mr. Ruben replied. Cause submitted.

D046224 Berkes v. San Diego Foreclosure Services Inc., et al.

D047346 Previti v. Berkes et al.

Cause called on merits. Bryan William Pease, Esq. argued for appellant. Phillip Burkhardt, Esq. argued for respondent, Richard and Patricia Heidt. Howard D. Hall, Esq. argued for respondent, Previti. Kenneth E. Lange, Esq. argued for respondent, Previti. Terry Loftus, Esq. argued for respondent, San Diego Foreclosure Services, Inc. Mr. Pease replied. Cause submitted as to D046224 only.

Court recessed at 2:39 p.m. until Wednesday, August 16, 2006 at 9:00 a.m.

D048074 Evans v. Superior Court of the County of San Diego/Regal Concepts et al.

The petition is denied.

D048694 Rosenberg v. Superior Court of San Diego County/ELM Adult Day Health Care Center et al.

The petition is denied.

D049081 McKinley v. Contursi

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
August 16, 2006

D046393 People v. Vitale

The judgment is affirmed. Benke, Acting P.J.; We Concur: Haller, J., O'Rourke, J.

D046770 Scott v. Smith

The order and judgment are affirmed. The request for attorney fees and costs on appeal is denied. Each party to bear his own costs. Huffman, Acting P.J.; We Concur: Haller, J., Aaron, J.

Court convened at 9:00 a.m.

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Terry O'Rourke and Joan Irion
Clerk: D. Moore

D047123 People v. Chatman

Cause called on merits. Susan K. Keiser, Esq. argued for appellant. David Delgado-Rucci, Deputy Attorney General argued for respondent. Ms. Keiser replied. Cause submitted.

D046702 Colony Hill v. Ghamaty

Cause called on merits. Gerard M. Mooney, Esq. argued for appellant. Jerold H. Goldberg, Esq. argued for respondent. Mr. Mooney replied. Cause submitted.

D046945 National Directory Company v. Empire Bail Bonds, Inc.

Cause called on merits. Philip L. Gagnon, Jr., Esq. argued for appellant. Francis T. Sakamaki, Esq. argued for respondent. Mr. Gagnon replied. Cause submitted.

Court adjourned at 10:07 a.m.

D046284 CWE Enterprises et al. v. McGraw-Hill Broadcasting Company, Inc.

D046672 CWE Enterprises et al. v. McGraw-Hill Broadcasting Company, Inc.

(Consolidated) The judgment and order are affirmed. The matter is remanded to the trial court for consideration of Broadcasting's request for attorney fees incurred in this appeal. Broadcasting is entitled to costs on appeal. Aaron, J.; We Concur: Huffman, Acting P.J., Haller, J.

D048750 In re Mims on Habeas Corpus

The petition is denied.

D046076 People v. Bahena

The judgment is affirmed. McDonald, J.; We Concur: McConnell, P.J., Haller, J.

D046977 People v. Douglas

The judgment is affirmed. McIntyre, Acting P.J.; We Concur: Aaron, J., Irion, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
August 16, 2006 (Continued)

D047496 People v. Ravaux

The judgment is affirmed. McIntyre, J.; We Concur: Haller, Acting P.J., McDonald, J.

D047888 In re John M., a Juvenile

The dispositional judgment is reversed. The matter is remanded to the juvenile court for a new dispositional hearing. At the hearing, the court may order the Agency to obtain information about the suitability of Dewayne's home as a placement for John, either through the ICPC process or by alternative means. The court shall make its placement decision after receiving any information it deems necessary, and after evaluating the criteria in Welfare and Institutions Code section 361.2, in a manner consistent with this opinion. CERTIFIED FOR PUBLICATION. McIntyre, J.; We Concur: McConnell, P.J., Haller, J.

D048375 In re Marriage of Brandes

Upon written stipulation filed by the parties to the cross-appeal, the cross-appeal is dismissed and the remittitur is ordered to issue immediately as to the cross-appeal only. Each party to bear own costs on cross-appeal.

D048699 In re Garrett on Habeas Corpus

The petition is denied.

D046909 Virissimo v. Remedy Intelligent Staffing, Inc.

Appellant filed a written request for dismissal on August 11, 2006. This Court's July 31, 2006, order placing the above-entitled case on calendar for Monday, September 11, 2006, at 9:00 a.m. is vacated. The appeal is dismissed and the remittitur is ordered to issue immediately (Cal. Rules of Court, rule 20(c)(2)).

D047229 Welch-Hess et al. v. Remedy Intelligent Staffing, Inc.

Upon written request filed by appellant, the appeal is dismissed and the remittitur is ordered to issue immediately (Cal. Rules of Court, rule 20(c)(2)).

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
August 17, 2006

D047016 Polselli v. Latin Marketing Services Inc., et al.

The judgment is affirmed. Defendants shall recover costs on appeal. McDonald, J.;
We Concur: Haller, Acting P.J., McIntyre, J.

D046247 People v. Flores

The judgment is affirmed. Haller, J.; We Concur: Huffman, Acting P.J., Aaron, J.

D047998 People v. Andrys

The judgment is affirmed. Aaron, J., We Concur: Nares, Acting P.J., McIntyre, J.

D046891 People v. Tejeda

The judgment is affirmed. Irion, J.; We Concur: Nares, Acting P.J., Aaron, J.

D047387 People v. Lyons

The judgment is affirmed. Aaron, J.; We Concur: McIntyre, Acting P.J., O'Rourke, J.

D046796 People v. Hendrickson

The judgment is affirmed. Aaron, J.; We Concur: McConnell, P.J., Nares, J.

D048697 In re Martin on Habeas Corpus

The petition is denied.

**D049000 Panther v. The Superior Court of San Diego County/Mazzarella, Dunwoody
& Caldarelli et al.**

The petition is denied.

D049095 Lee v. Lee

Because appellant did not timely pay the filing fee, the appeal is dismissed. (Cal. Rules of Court,
rule 1(c)(5)).

D045154 Benetta Buell-Wilson et al. v. Ford Motor Company et al.

D045579 Benetta Buell-Wilson et al. v. Ford Motor Company et al.

It is ordered that the opinion filed herein on July 19, 2006, be modified [see order]. There is no
change in judgment. The petition for rehearing is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
August 18, 2006

D046893 People v. Root

The judgment is affirmed. Irion, J.; We Concur: McConnell, P.J., Haller, J.

D048504 In re Tyler B., a Juvenile

Appellant has failed to file a brief after notice given pursuant to California Rules of Court, rule 17(a)(1), 37.3(b)(5), and 37.4(a)(2). The appeal is dismissed.

D049032 Miryam H. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner Miryam H. has notified the court that a petition for writ of mandate under California Rules of Court, rule 38.1 and 1436.5 will not be filed there are no viable issues for writ review. The case is dismissed.

D046306 In re Marriage of Kim.

The judgment is affirmed. McConnell, P.J.; We Concur: Benke, J., O'Rourke, J.

D047886 People v. Crouse

The judgment is affirmed. Benke, Acting P.J.; We Concur: Haller, J., Irion, J.

D044546 Red Mountain LLC. v. Fallbrook Public Utility District

The portions of the judgment finding Fallbrook liable for breach of contract and inverse condemnation and awarding Red Mountain damages and interest for breach of contract and inverse condemnation are reversed and the matter is remanded for a retrial of those causes of action. The judgment is otherwise affirmed. The postjudgment order awarding Red Mountain litigation expenses under Code of Civil Procedure sections 1036 and 1250.410 is reversed and the matter is remanded for redetermination in light of the outcome of the retrial of Red Mountain's causes of action for breach of contract and inverse condemnation. The stay this court issued on September 8, 2004 is vacated. The parties shall bear their own costs on appeal. CERTIFIED FOR PUBLICATION. Aaron, J.; We Concur: Huffman, Acting P.J., McIntyre, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
August 18, 2006 (Continued)

D049162 Perez v. Department of Motor Vehicles/Borucki

The petition for writ of supersedeas, request for stay and opposition have been read and considered by Justices McIntyre, O'Rourke and Irion.

The petition for writ of supersedeas is granted in part, and the license suspension is stayed to the extent that Perez may drive only for work and only during daylight hours.

We condition the supersedeas on expediting the appeal as follows. The court deems the exhibits to the petition as the record on appeal. The court will entertain requests to augment the record filed within 10 days of the date of this order. Appellant's opening brief is due on or before September 29, 2006. The respondent's brief is due on or before October 30, 2006. The appellant's reply brief is due on or before November 20, 2006. Rule 17 does not apply. No requests for extension of time will be granted absent extraordinary good cause.

Absent a request on or before November 27, 2006, oral argument will be deemed waived. If a party requests oral argument, the request should be in letter form with proof of service on the other parties. The letter should also identify the focus of the party's argument and the amount of time requested, not to exceed 15 minutes.

D048824 CEFS Inc., et al. v. Superior Court of the County of San Diego/Creative Capital Leasing Group, LLC

The petition is denied. Petitioners have an adequate remedy by way of appeal.

D049133 Velazquez et al., v. Superior Court of the County of San Diego/Sharp Coronado Hospital & Health Care

The request for judicial notice is granted. The petition is denied.